

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

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**IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION**

MDL NO. 1456

U.S. DISTRICT COURT
DISTRICT OF MASS.

ACTION: 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

JUDGE PATTI B. SARIS

ALL ACTIONS

**MOTION FOR PROTECTIVE ORDER OF BOEHRINGER INGELHEIM
CORPORATION, BEN VENUE LABORATORIES, INC., AND BEDFORD
LABORATORIES**

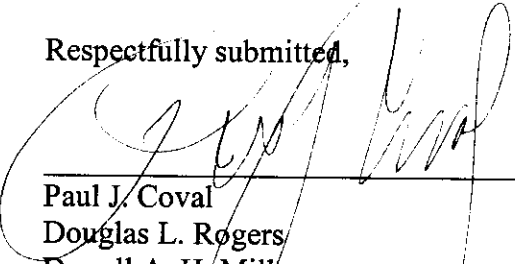
Pursuant to Federal Rule of Civil Procedure 26(c)(1) and Local Rule 26.2(C), Defendants Boehringer Ingelheim Corp., Ben Venue Laboratories, Inc., and Bedford Laboratories move for a Protective Order from all discovery at least until such time as this Court rules on Defendants' motions to dismiss. The Motion for Protective Order should be granted for the following reasons: (1) the only drug for which Plaintiffs seek discovery from Defendants, Viramune, is not among the claims alleged the Amended Master Consolidated Class Action Complaint ("AMCC"); (2) Viramune is not manufactured or distributed by any of the entities listed as members of the "Boehreinger Group" in paragraphs 64-66 of the AMCC; and (3) Plaintiffs have not alleged a fraudulent AWP for Viramune anywhere in the AMCC as required by this Court's May 13, 2003 Order.¹

¹ In addition, Defendants have grounds to doubt that Viramune is a Medicare Part B drug.

Defendants have made a good faith attempt to resolve this discovery issue by sending a letter dated December 4, 2003 inviting Plaintiffs to confer. *See* Ex. A. However, as of the date of this Motion, Plaintiffs have not responded to this invitation.

A Memorandum in Support and proposed Order is attached herein for consideration by the Court.

Respectfully submitted,



Paul J. Coval
Douglas L. Rogers
Darrell A. H. Miller
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216
(614) 464-6400
(614) 464-6350 FAX

*Attorneys for Boehringer Ingelheim Corp., Ben
Venue Laboratories, Inc. and Bedford Laboratories*